

Welcome to the World of Intermodal Container Transportation Law

A warm welcome to all of you who have signed up for this 3-hour elective course on Intermodal Container Transportation Law (Course # 8104A).

Since I understand some of you may not have taken the basic admiralty law course, or had any exposure to cargo transportation law, the first several classes are intended to provide an overview of the intermodal (a/k/a, multi-modal) container shipping industry, including a brief history of the “container revolution,” the various “players” in the industry, and its critical role in today’s global supply chain and our world’s economy generally.

With a basic understanding of what the intermodal container transportation system is, how it evolved, and how it works, we’ll then turn to the legal regimes which govern the industry (with by a brief introduction to admiralty law as a unique legal specialty), focusing on the law applicable to disputes which arise out of the intermodal transport of containerized cargo, and with a particular emphasis on U.S. statutory and case law.

In connection with these first several introductory classes, you may wish to consult the following readings, to be found in the “admiralty law” section of the secure course reference shelves of the library:

Marc Levinson, *The Box: How the Shipping Container Made the World Smaller and the World Economy Bigger*, pp. 1-11, 16-21, 52-53, 201-11, 264-67 (2006)

Brian J. Cudahy, *Box Boats: How Container Ships Changed the World*, pp. 8-10, 27-30, 86-89, 240-51 (2006)

I look forward to meeting all of you Monday morning, August 16, at 10:30 a.m., in Rm. 334. In the meantime, you’ll find attached a copy of the Course Syllabus which will give you a brief overview of the course, a summary of my professional background and practice experience, a list of prospective container shipping industry speakers, and an outline of the course lectures, with related reading assignments.

Please confirm to me **by return email** that you have received this message, with attachments, so I’ll know I’m communicating effectively.

Feel free to email me with any questions.

Gordon Schreck, Distinguished Adjunct Professor

CHARLESTON SCHOOL OF LAW

COURSE SYLLABUS

INTERMODAL CONTAINER TRANSPORTATION LAW (Fall 2021)

Faculty:

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Course Overview and Objectives: The objective of this course will be to provide an in-depth introduction to ocean container transportation law, focusing on the applicable legal regimes governing the intermodal transport of containerized cargo by ship, rail and truck, with particular emphasis on the legal liabilities associated with multi-modal container transport. The course will include: a brief overview of the history of the “container revolution” in ocean shipping; how the various players in the industry (containerships, rail, trucking, stevedores, terminal operators, shippers, and custom house brokers/freight forwarders) interact to facilitate a seamless global supply chain, transporting “99% of everything” in ocean containers; and the relevant legal framework (statutory and case law) governing this important industry. The students will also have the opportunity to hear from leading representatives of the various sectors of the container shipping industry, and to visit one of Charleston’s modern ocean container terminals to observe first-hand the operational side of the industry.

Faculty Bio: Mr. Schreck joined the CSOL faculty, as a distinguished visiting adjunct professor, upon his retirement in 2018 from active practice as a partner in Womble Bond Dickinson (US) LLP (formerly Buist Moore Smythe & McGee), where he had been engaged in a general admiralty trial and appellate practice, including cargo damage and personal injury defense, limitation of liability, collisions, sinkings, fires, oil and hazardous substance spills, marine insurance coverage disputes, and most recently, with particular emphasis on intermodal container cargo casualties.

Mr. Schreck is a co-founder and Chairman of the Charleston Maritime Law Institute (“CMLI”) at CSOL. He is also a member and former chairman of the Southeastern Admiralty Law Institute (“SEALI”), and a member and former director of the Maritime Law Association of the United States (“MLA”), currently serving on the MLA’s Proctor Membership, and Carriage of Goods Committees. He has served as an Associate Editor of *American Maritime Cases*, the nation’s only case reporter service dedicated exclusively to the publication of state and federal maritime court decisions.

Mr. Schreck continues to remain active in the maritime industry, serving as Chairman *emeritus* of the Maritime Association of South Carolina (“MASC”), and as a member and past president of the Propeller Club of Charleston. He is an at-large, private-sector appointee to the U.S. Coast Guard’s Charleston Area Maritime Security Committee (“AMSC”), one of 43 congressionally-mandated committees created after 9/11 to ensure the safety, security, and resilience of the nation’s ports and critical marine transportation system.

Office hours: Mr. Schreck will normally be available to meet with students before and after each class, or at other times by appointment. Appointments should be made via email at gschreck@charlestonlaw.edu.

Required text: *Admiralty and Maritime Law in the United States: Cases & Materials*, by Robertson, Friedell, and Sturley, Third Ed. (2015), together with that text’s current *Statutory Supplement*.

It is also **recommended, but not required**, that students consult the following text available in the library and/or on line: “Federal Civil Judicial Procedure and Rules”, 2020 Ed., Thomson Reuters.

Reading Assignments: Reading assignments will be from the required/recommended texts, and from assigned reported case decisions (**see** attached course outline with reading assignments noted). Students will be expected to have read each class assignment and be prepared to engage in robust, interactive discussion with the professor and fellow students on the substantive issues at hand.

Charleston School of Law Attendance Policy:

No student may miss more than **15 percent** (rounded to the nearest whole number) of the class meetings in any course or seminar. A student who is tardy or who exits class early may, at the discretion of the professor, be marked as absent. If a student exceeds this limit, the student shall not be permitted to take the final exam, absent a waiver of sanctions by the academic dean.

Under this policy, for Fall Semester 2018, for courses that meet twice a week, students may not miss more than **4 class periods** during the semester.

To get credit for attendance, a student must sign the roster for every class. It is the student’s responsibility to sign the roster for every class and failure to do so is the equivalent of being marked absent for that day.

Policy Regarding Coursework Requirements:

Under *Charleston School of Law policy*, the amount of work for each credit hour of a course must be: At least 750 minutes of in-class time (12 ½ hours), which may include 50 minutes of final examination time; and, at least 1,800 minutes (30 hours) of out-of-class student work. This is a **3-credit hour** class, meaning that, in addition to attending classes, you should plan to spend a minimum of **6 hours each week** during the semester preparing for class.

Students with Disabilities:

Students with disabilities should contact the Associate Dean for Academic Affairs as soon as possible to request reasonable accommodations.

Basis for Final Grade:

Your grade will be based on two (2) components: (1) There will be a final closed-book, non-proctored, timed exam that will count for 75% of your grade. The exam is graded on the Anonymous Grading System (“AGS”); and (2) Class participation which will count for 25% of your grade. This latter component will encompass attendance, participation in class, and the extent and quality of class preparation.

Industry Speakers for Fall 2021 Semester:

See attached list of tentative container shipping industry speakers (subject to change, depending on speaker availability and scheduling).

Office Hours:

I encourage and all questions you may have about course assignments, class lectures, the maritime transportation/global logistics/container shipping industry in general, your law school experience, and career opportunities. Just let me know before or after class or via email, if you would like to make an appointment.

Course Syllabus Outline

Lecture No.:	Topic	Readings
1	<p>I. History of the Container Revolution and Introduction to the Industry</p> <p>A. “from Bales to Boxes”; The Revolution that modernized the cargo transportation industry.</p> <p>B. Today’s Intermodal Transportation Industry: “Bigger is better.”</p> <p>C. Intermodal container shipping at the Port of Charleston.</p> <p>D. The “Players” in the Industry.</p>	<p>Suggested: <i>The Box</i>, Levinson, pp. 1-11, 16-21, 52-53, 201-211, and 264-267</p>
2.	<p>II. U.S. Admiralty Jurisdiction Practice.</p> <p>A. “Admiralty” and “Maritime” law: Definitions and Origins.</p> <p>B. Basis for U.S. Admiralty Subject-Matter Jurisdiction.</p> <p>C. Evolution of Admiralty Subject-Matter Jurisdiction over Intermodal container transport contract cases.</p> <p>D. Unique features of Modern Admiralty practice and procedures.</p>	<p>Robertson, Friedell, Sturley Text (Required) - pp. 3-15, 50-62*</p> <p>Supp., pp. 73-83</p> <p><u><i>Eddystone vRail Co. v. Rios</i></u>, 2019 A.M.C. 1366 (E.D. Pa. 2019)</p> <p>pp. 54-56, 122-126</p>
3.	<p>III. Introduction to Cargo Liability Regimes Governing Containerized Cargo Transport Claims in U.S.</p> <p>A. Harter Act (1893).</p> <p>B. Hague Rules/COGSA (1936).</p> <p>C. Interaction between Harter Act and COGSA.</p> <p>D. U.N. Convention on Contracts for the International Carriage of Goods, HOLLY or Partly by Sea (the “Rotterdam Rules”) (2008)</p>	<p>pp. 275-284</p> <p>Supp., pp. 46-47, 67-72, and 97-111</p>
4.	<p>IV. Ocean Bill of Lading/Sea Waybill: The Maritime “Contract of Carriage”</p>	<p>pp: 275-276</p>

*** All page references hereinafter are to the required text, “Admiralty and Maritime Law in the U.S.”, 3rd Ed.**

	<p>A. Legal Features: Applicable Laws, Function and Use.</p> <p>B. Major Terms and Conditions of a Carriage Contract.</p>	
5.	<p>V. The Ocean Carrier's Duties under COGSA.</p> <p>A. The Concept of "Delivery"</p> <p>B. Seaworthiness of the Vessel</p> <p>C. Providing a Proper Ship.</p>	<p>pp. 284-286</p> <p>Supp., pp. 67-69 (COGSA §1-3)</p>
6.	<p>VI. The Cargo Claimant/Plaintiff's Action under COGSA.</p> <p>A. Burdens of Proof and Presumptions.</p> <p>B. Plaintiff's <i>Prima Facie</i> case.</p>	<p>pp. 286-298</p> <p><u>Transatlantic Marine v. M/V OOCL Inspiration</u>, 137 F.3d 94 (2nd. Cir. 1998)</p>
7.	<p>VII. COGSA's Excepted Perils (Carriers Defenses).</p> <p>A. Errors in the navigation or management of the ship [Section 4(2)(a)]</p> <p>B. The COGSA Fire Defense [Section 4(2)(b)] and the Limitation Act "Fire Statute"</p> <p>C. Overwhelming Natural Forces: Perils of the Sea [Section 4(2)(c)] and Acts of God [Section 4(2)(d)].</p>	<p>pp. 38, 298-304</p> <p>Supp., pp. 69-71 (COGSA) §5 and 6)</p>
8.	<p>VIII. COGSA'S Excepted Perils (Con't): Overwhelming Human Forces</p> <p>A. Acts of War [Section 4(2)(e)]</p> <p>B. Act of Public Enemies [Section 4(2)(f)]</p> <p>C. Arrest/Restraint of Princes [Section 4(2)(g)]</p> <p>D. Quarantine [(Section 4(2)(h)]</p> <p>E. Strikes [Section 4(2)(j)]</p> <p>F. Riots and Civil Commotions [Section 4(2)(k)].</p>	<p>pp. 293-297</p> <p>Supp., pp. 69-70</p>
9.	<p>IX. Faults of the Shipper/Owner of Cargo.</p> <p>A. Act or Omissions of Shipper [Section 4(2)(i)]</p>	<p>pp. 302-304</p>

	<p>B. Inherent Vice [Section 4(2)(m)]</p> <p>C. Insufficiency of Marks [Section 4(2)(o) and 3(3)]</p> <p>D. Insufficiency of Packing [Section 4(2)(n)].</p> <p>E. COGSA's "Catch-All" Exception [Section 4(2)(q)]</p> <p>F. Shipper's Duty to Carrier [Section 4(3)]</p>	
10.	<p>X. Implications of Carrier's Voyage Deviation.</p> <p>A. The Concept of "Deviation" as a "Fundamental Breach" of the Carriage Contract.</p> <p>B. Saving Life/Property at Sea as an Excepted Deviation [Section 4(2)(l) and Section 4(4)]</p> <p>C. Judicially Created "Quasi" Deviations.</p>	
11.	<p>XI. Limitation of Liability and the Package Problem.</p> <p>A. Background.</p> <p>B. Defining a "Package" in the world of Containerized Shipping [Section 4(5)].</p> <p>C. The "Rotterdam Rules": A possible solution to the Package Problem?</p>	<p>pp. 304-313</p> <p>Supp., pp. 106-107 (Art. 59)</p>
12.	<p>XII. Breaking/Avoiding \$500/Package Liability Limitation: "Fair Opportunity" to "Declare a Hire Bay".</p> <p>A. Declaring a Higher Value of the Cargo in B/L or Waybill.</p> <p>B. The Judicial "Fair Opportunity Doctrine".</p>	
13.	<p>XIII. Negligent Third Parties and the "Himalaya Clause."</p> <p>A. Stevedores as Necessary Third Parties for Loading/Discharging Containerized Cargo.</p>	

	<p>B. "Downstream" Third-Party Carriers: Trucks and Rail.</p> <p>C. The "Himalaya Clause" and Covenants-Not Too Sue: A Contractual Solution.</p>	
14.	<p>XIV. Notice of Claim and Limitation of Actions.</p> <p>A. Notice of Loss or Damage [Section 3(6)]</p> <p>B. Time for Filing Suit [Section 3</p> <p>C. "Delivery" as Trigger for Notice and Time Bar Requirements</p>	Supp., pp. 68-69
15.	<p>XV. Jurisdiction Clauses in Container Shipping Waybills.</p> <p>A. Evolution of Jurisdiction Clauses in Ocean B/L/Waybills (Choice-of-Law and Forum-Selection Clauses).</p> <p>B. Judicial Evolution from Animosity to Acceptance: <i>The Breman, Carnival Cruise, and Sky Reefer Cases</i>.</p>	<u>Global Oil Tools v. Expeditors International of Washington</u> , 429 F.Supp. 3d 221(E.D. LA. 2019)

TENTATIVE LIST OF CONTAINER SHIPPING INDUSTRY SPEAKERS, FALL 2021

James I. Newsom, III – President/CEO, South Carolina State Ports Authority (representing ocean terminal operators).

Nicholas Hargreaves, Esq. – USA General Counsel/Head of U.S. Cargo Claims for MSC Mediterranean Shipping CO. (USA), Inc. (representing containership owners/operators).

Paul Ferri/Bill Bean – South Carolina Stevedores Association (representing stevedoring industry, responsible for loading and discharging containers on/off of containerships).

Coleman Thompson – V.P., Hunter Transportation (representing trucking/drayage industry, responsible for trucking ocean containers to/from port terminals and/or distribution centers and/or point of origin/final destination).

Patrick McCrory – V.P and Chief Commercial Officer, Palmetto Railways (representing rail service providers moving containers to/from port terminals via rail).

Steve Young – President, Dockside Logistics, LLC (representing warehouses and distribution centers providing merchandise storage and distribution center services for containerized import/export cargoes).

Kenneth Riley – President, International Longshoremen’s Association, Local 1422 (representing longshore/checker labor hired by stevedoring companies to load/unload containers at port terminals).

Pat Fosberry – Director of Export Compliance, John S. James Co. (representing the customs brokers/freight forwarders industry, providing freight forwarding and global logistics services to container shipping industry).

Capt. John Cameron, U.S. Coast Guard (Ret.) Executive Dir., Charleston Branch Pilots’ Assoc. (representing U.S. Coast Guard’s role in the enforcement of Federal regulations governing the safe transportation of ocean shipping containers).

Honorable David C. Norton – Senior U.S. District Judge, District of S.C., Charleston Division (representing Art. III Federal judiciary empowered to hear and decide all Rule 9(h) “admiralty cases involving container cargo damage claims governed by U.S. Carriage of Goods by Sea Act).

(NOTE: The above list of prospective speakers, representing the various sectors vital to the functioning of the intermodal ocean container shipping industry, in no particular order, is tentative and subject to change based on speakers’ availability during the class schedule.)